

BARBARA A. MIKULSKI
MARYLAND

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Competition
Media
Ownership

United States Senate
WASHINGTON, DC 20510-2003

May 20, 2015

The Honorable Tom Wheeler
Chairman, Federal Communications Commission
445 12th St SW
Washington, DC 20536

Dear Chairman Wheeler:

I write to express my concerns about the Commission's proposal for changing the process for findings of "effective competition" for cable companies in certain markets.

In Section 111 of the STELA Reauthorization Act of 2014 (STELAR), Congress directed the Federal Communications Commission (FCC) to streamline the "effective competition" petition process for "small cable operators, particularly those who serve primarily rural areas" to seek a waiver. This provision of STELAR clearly indicates that the streamlining process should be limited to cable operators that meet the existing statutory definition of a "small cable operator."

Instead, the FCC's proposed rules would apply to all cable providers and the FCC's proposal appears to assume that all communities served by cable operators are "effectively competitive," with no obligation on cable operators to show evidence of competition in the market.

As always, my interest is in protecting my constituents' access to local news, politics, sports, cultural events, and emergency notifications. And I am concerned about the impact that this proposal could have on cable consumers by potentially making it more difficult or expensive for consumers to access certain programming.

I urge the FCC to reconsider its proposal to deregulate the cable industry and instead follow the narrow changes that Congress passed.

Thank you for your consideration of this request. If you have any questions, you may contact Aaron Edelman of staff at (202) 224-4654.

Sincerely,

Barbara A. Mikulski
United States Senator



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 5, 2015

The Honorable Barbara A. Mikulski
United States Senate
503 Hart Senate Office Building
Washington, D.C. 20510

Thank you for your letter about the scope of the Commission's implementation of Section 111 of the STELA Reauthorization Act of 2014 (STELAR).

As you know, Congress established the test for Effective Competition currently implemented by the Commission in the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). The statutory test for the type of Effective Competition at issue in the proposed Order is satisfied if the franchise area is "(i) served by at least two unaffiliated [MVPDs] each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by [MVPDs] other than the largest [MVPD] exceeds 15 percent of the households in the franchise area."¹ When the Commission adopted the presumption of no Effective Competition in 1993, incumbent cable operators had approximately a 95 percent market share of MVPD subscribers.

In the more than twenty years since Congress's 1992 instructions, competition in the video marketplace has increased dramatically. The nationwide presence of DIRECTV (which provides local broadcast channels to 197 markets representing over 99 percent of U.S. homes) and DISH Network (which provides local broadcast channels to all 210 markets), alongside the significant number of direct broadcast satellite (DBS) subscribers (34.2 million or 33.9 percent of MVPD subscribers),² results in approval of Effective Competition petitions in almost every instance. The FCC has granted Effective Competition petitions in over 10,000 communities thus far and has found that Effective Competition exists in more than 99.5 percent of the communities evaluated since 2013.

In adopting a rebuttable presumption of Competing Provider Effective Competition, the Commission provided the administrative relief for small cable operators required by Section 111 of STELAR. It also preserved the ability of local franchising authorities (LFAs) to rate regulate if they are able to provide data refuting the presumption. Less than one-fifth of the communities currently eligible to rate regulate have taken the administrative steps necessary to do so, but LFAs that demonstrate a lack of Effective Competition will continue to be able to provide regulatory safeguards. The Office of Cable and Broadband Services in Montgomery County,

¹ 47 U.S.C. § 543(l)(1). This type of Effective Competition is known as Competing Provider Effective Competition. The other three types of Effective Competition defined in the statute are Low Penetration Effective Competition, Municipal Provider Effective Competition, and Local Exchange Carrier (LEC) Effective Competition. Only a presumption of Competing Provider Effective Competition is at issue in this proceeding.

² *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253, 3256, ¶¶ 2, and 3300-01, ¶¶ 112-113 (2015).

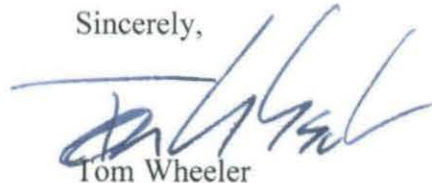
Maryland, is one of the most active and engaged LFAs nationwide, and I expect that its valuable contribution will continue. Furthermore, other franchising authority abilities, including the collection of franchise fees, negotiation or oversight of PEG channels and I-Nets, or creation and enforcement of customer service requirements, will not be affected.

Several commenters have suggested that this Commission action will result in the elimination of the basic service tier of programming, resulting in higher prices for price-sensitive cable customers.³ For the last several years, however, we have been able to watch real-world examples of what happens when cable rate regulation is removed. In the thousands of cable systems subject to Effective Competition, there has been no evidence in this proceeding to suggest that our previous findings of Effective Competition in thousands of communities led to any changes in the tier placement of local broadcast stations. Significantly, our most recent report on cable industry prices concludes that the average rate for basic service is lower in communities with a finding of Effective Competition than in those without such a finding. This is not surprising, since competitive choice is the most efficient market regulator.

I share your concern about access to affordable local programming options. The item recently adopted by the Commission does nothing to undermine this goal. Instead, it provides the specific relief requested by Congress and acknowledges the response in the video marketplace to the aims of the 1992 Act.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Wheeler', is written over a horizontal line.

Tom Wheeler

³ See, e.g., Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC (May 15, 2015). See also Letter from Public Knowledge *et al.* to The Honorable Tom Wheeler *et al.* (May 26, 2015).